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REMARKS

This amendment is submitted in response to the office action mailed December 21, 2006 and further to the Notice of Appeal dated March 21, 2007. A Request for Continued Examination (RCE) is submitted herewith. Claims 1-10 and 12- 50 are currently pending. Independent claim 1, 17, 32 and 46-50 have been amended to highlight further distinguishing features. Claim 11 has been canceled since similar subject matter is now recited in claim 1. Claim 12 has been amended to adjust dependency, and claim 13 has been amended for readability. Reconsideration is respectfully requested.

Art Rejections

Claims 1-3, 5-17, and 19-50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of USP 5,978,381 ("Perlman"), US Appln. Pub. No. 2002/0198963 ("Wu"), and U.S. Appln. Pub. No. 2002/0095228 ("Corts"). Claims 4 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Perlman and Wu and in view of USP 6,266,774 ("Sampath"). Independent claim 1, 17, 32 and 46-50 have been amended to recite further distinguishing features to expedite prosecution, and Applicant respectfully submits that claims 1-10 and 12-50 are patentable over the applied references.

Claim 1 as amended recites a system for dynamic scheduling of broadcast digital data content to client devices of users, the digital data content available from one or more sources, and the scheduling based on type of data and activity of said system. The system comprises a digital radio broadcast system comprising one or more gateways, said one or more gateways being configured for receiving and intelligently broadcasting one or more selections of digital data content. The one or more gateways comprise a scheduler for receiving said data content. The scheduler is configured for separating said received content into a first data type and a second data type, scheduling said first data type to be broadcast via digital radio transmission to said client devices during selective first broadcast periods, and scheduling said second data type to be broadcast via digital radio transmission to said client devices during selective second broadcast periods. The data content is enabled for use during a scheduled time period after a recombination of said broadcasted first data type and second data types at said client devices. Claim 1 further recites that the gateway is configured to process information for digital radio broadcast transmission to the client devices for enabling and disabling a

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deactivate flag for the first data type such that the first data type will be stored at said client devices, but not activated for immediate use until after the recombination, *wherein the enabling and disabling of the deactivate flag occurs regardless of user instructions.*

In contrast, even if hypothetically combined as suggested by the Office, the applied references would not yield the combination of features recited in claim 1. The Office alleges that Perlman discloses broadcasting content with a deactivate flag so that it is stored but not used immediately. (Office Action at p. 5, rejection of claims 11-13, citing col. 13, lines 14-24 of Perlman.) To the extent that col. 13, lines 14-24 of Perlman are viewed by the Office as allegedly relating to deactivated content that is then activated, that section of Perlman would require that *the user of Perlman's device take positive steps to activate the content.* In particular, Perlman states:

Certain content that is downloaded using the mechanisms just described may be intended for viewing only by a user paying a special fee. According to one embodiment, client device 202 downloads such so-called for-pay content, *but does not allow the user to view the data unless certain conditions are met such as, for example, the transferring of funds to the account of the owner of the for-pay content.* Another condition permitting the viewing of the for-pay content might be a trial offer whereby the user may preview part of the for-pay content, *but must pay for viewing the rest of the for-pay content.* " (Perlman at col. 13, lines 14-24, emphasis added).

In contrast, amended claim 1 reflects that the deactivated content is activated *regardless of user instructions.* For instance, the present disclosure reflects that the determinations regarding the enabling and disabling of the deactivate flag can be done at the gateway (e.g., referred to iPPG in this example) regardless of user instructions. For example, paragraph 0040 of the published application states:

The iPPG is also involved in reliability, rate at which broadcast of message should be repeated, time at which a message should commence broadcasting, determining pre-download with deactivate flag enabled, and determining when to activate the deactivate flag.

Also, for example, paragraph 0060 of the published application states:

In FIG. 7b, receiver turbo broadcast layer parses for real-time data 711 and non-real-time data 710 for message completeness and validity. Next, an

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activation flag is then looked up in the valid message. In the event the enable flag is false, the contents are stored. These contents are now IPPG controlled. Therefore, they can be activated and deactivated as per need.

Thus, even if, for the sake of argument, the Office's hypothetical combination were made, the hypothetical result would not yield the combination of features recited in claim 1. The Office's rejection relies upon Wu for allegedly disclosing a method to enable a user to schedule a time to render downloaded content (Office Action at pp. 3-4). The Office's rejection in this regard states that in Wu *the user* schedules the time of rendering downloaded content. However, as noted above, claim 1 recites that the enabling and disabling of the deactivate flag occurs *regardless of user instructions*. The Office's rejection also relies upon Corts for disclosure of digital radio broadcasting. As such, the Office's reliance upon Wu and Corts does not make up for the deficiencies of Perlman.

Thus, for at least these reasons, withdrawal of the rejection and allowance of claim 1 are respectfully requested. Independent claims 17, 32 and 46-50 have been amended to highlight distinctions similar to those noted above for claim 1. Namely, claims 17, 46, 47 and 49 now recite "said activation message being sent regardless of user instructions," and claims 32, 48, 50 now recite "said activating occurring regardless of user instructions." Thus, claims 17, 32 and 46-50 are patentable over the Office's combination of applied references at least for reasons discussed above. The remaining claims are allowable at least by virtue of dependency from various ones of these independent claims.

Moreover, it is believed that the rejection does not make out a *prima facie* case of obviousness. It is believed that one of ordinary skill in the art would not have found it obvious to modify the Perlman system to use in-band on-channel (IBOC) digital radio broadcasting system as disclosed in Corts. The infrastructures for Perlman's conventional Internet system and Corts' IBOC system are vastly different. Whereas Perlman's system employs a client-server model for Internet based communications that involve two-way communication between clients and servers over the conventional Internet, IBOC involves digital radio broadcast transmission over the air in which a receiver does not send transmissions back to a transmitter over frequency range for which the receiver receives transmissions. Moreover, the rejection is devoid of necessary details and is not fully understood. Is the Office also suggesting that it would have been obvious to modify the Internet infrastructure of Perlman to include IBOC transmission hardware as in Corts and, if so, how? The Office Action merely states in this regard, "it would have been obvious . . . to

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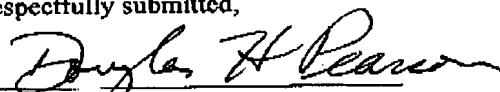
utilize digital radio broadcasting in Perlman's system, in order to further extend the number of devices that can receive Perlman's content" (Office Action at p. 4.) What does "utilize" mean in the Office's rejection? How would Perlman's Internet-based system "utilize" digital radio broadcasting? What is being hypothetically modified? What is the nature of the client devices in the hypothetically modified system that would receive information in this hypothetical hybrid environment? One is left to guess because the Office's rejection in this regard entirely devoid of sufficient details. As a result, the Applicant is deprived of necessary information to fully evaluate the rejection. Thus, it is respectfully submitted that the rejection is flawed and should be withdrawn for at least these additional reasons.

Conclusion

In light of the above amendments and remarks, the Applicant respectfully requests that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney if a telephone call could help resolve any remaining items.

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Respectfully submitted,


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